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A TRUE COPY ATTEST
Thomas F. Cabral
Massachusetts Process Server

7-26-2019

HEALTHPLUS SURGERY CENTER,
LLC, a New Jersey Limited Liability
Company

Plaintiff,

v.

PROSELECT INSURANCE
COMPANY,

Defendant.

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY: LAW DIVISION

DOCKET NO.: BER-L-5312-19

Civil Action

SUMMONS

The State of New Jersey, to the Above Named Defendant:

**ProSelect Insurance Company
One Financial Center
13th Floor
Boston, MA 02111**

The Plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The Complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at:

http://www.judiciary.state.nj.us/prose/10153_deputyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, New Jersey 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to Defendant Third Party Plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$175 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at:

http://www.judiciary.state.nj.us/pro_se/10153_deputyclerklawref.pdf

DATED: JULY 22, 2019

s/s Michelle M. Smith

Michelle M. Smith,
Clerk of the Superior Court

Name of Defendant to Be Served: **ProSelect Insurance Company**

Address of Defendant to Be Served: **One Financial Center
13th Floor
Boston, MA 02111**

BRACH EICHLER L.L.C.
Attorneys for Plaintiff

By:


David J. Klein, Esq.

Dated: July 22, 2019

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**COMPLAINT FOR DECLARATORY
JUDGMENT**

Plaintiff HealthPlus Surgery Center, LLC, a New Jersey Limited Liability Company ("HealthPlus") by way of complaint against defendant ProSelect Insurance Company ("ProSelect") states as follows:

ALLEGATIONS APPLICABLE TO ALL COUNTS

1. HealthPlus is a New Jersey licensed surgery center with offices at 321 Essex Street, Hackensack, New Jersey 07601
2. Defendant ProSelect is an insurance company with offices at One Financial Center, 675 Atlantic Avenue, Boston, Massachusetts 02111 licensed to do business in the State of New Jersey.
3. ProSelect issued two "occurrence" based insurance policies to HealthPlus covering Entity Medical Professional Liability. The first policy was policy number 002NJ000017922 covering the period 11/22/17 to 11/22/18. The second policy was policy number 002NJ000017922 for policy period 11/22/18 to 11/22/19. (Collectively "the policies")
4. Each of the policies has limits of \$2 Million Dollars per claim and \$5 Million Dollars aggregate.

5. As a result of an inspection of HealthPlus by the New Jersey Department of Health, ("DOH") certain alleged limited deficiencies in infection control, sterilization and injection safety practices were reported by the DOH.

6. As a result of the inspection and report, The DOH required HealthPlus to send a letter to all patients that received consultation or treatment at HealthPlus, between January 1, 2018 and September 7, 2018, advising, *inter alia* of the inspection and advising the patients that it was recommended that they obtain blood tests for Hepatitis B, Hepatitis C and HIV and where they could obtain those blood tests, which would be paid for by HealthPlus.

7. In compliance with the DOH instructions, HealthPlus sent such a letter to those patients, (approximately 3000 such letters were sent). Those patients had received a variety of services from HealthPlus, over many various dates, throughout the entire period between January 1, 2018 and September 7, 2018.

8. As a result of the sending of those letters, a number of those patients, and, in some cases, their spouses, filed suit against HealthPlus alleging, *inter alia*, that HealthPlus negligently provided services, failed to have in place, proper and effective standards, procedures and protocols, failed to properly inspect and maintain sterilization equipment and to conduct sterilization of tools and satisfy infection control guidelines, improperly dispensed medication, failed to have standards and procedures to insure safety, privacy and care in its procedures and through the injection of medications, as well as liability under the Doctrine of Res Ipsa Loquitur (requiring no proof of negligence) alleging physical and emotional injuries and damages.

9. HealthPlus timely tendered all of the lawsuits to ProSelect for defense and indemnification.

10. In response, ProSelect sent a series of Reservation of Rights letters to HealthPlus alleging, *inter alia* that all of the claims made by the plaintiffs in the various lawsuits, arose out of a single claim or

BER-L-005312-19 07/18/2019 3:05:40 PM Pg 3 of 4 Trans ID: LCV20191251909

occurrence and, therefore, coverage, for all of the suits and for all of the plaintiffs was limited to the single claim limit of \$2 Million Dollars under the policies.

11. HealthPlus contends that the aggregate limits of \$5 Million Dollars per policy applies.

12. As a result of the foregoing, there exists a justiciable controversy between plaintiff HealthPlus and defendant ProSelect.

13. As a result of the foregoing, plaintiff HealthPlus is entitled to a Declaration of Rights pursuant to N.J.S.A. 2A:16-52 to determine the rights of HealthPlus and the obligations of ProSelect under the policies.

WHEREFORE, HealthPlus Surgery Center, LLC demands judgment in its favor and against defendant ProSelect Insurance Company for the following relief:

1. For Declaratory Judgment pursuant to the New Jersey Declaratory Judgment N.J.S.A. 2A:16-52 that policy number 002NJ000017922 for policy periods 11/22/17 to 11/22/18 and 11/22/18 to 11/22/19 provide coverage for the claims asserted against HealthPlus Surgery Center, LLC in the personal injury actions, in the aggregate amount of \$5 Million Dollars;

2. For attorneys' fees and costs of suit;

3. For such other and further relief as the court may deem equitable and just.

BRACH EICHLER L.L.C.
Attorneys For
Plaintiff HealthPlus Surgery Center, LLC

BY: /s/Charles X. Gormally, Esq.
Charles X. Gormally, Esq.

Dated: July 18, 2019

DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, Charles X. Gormally, Esq. is hereby designated as trial counsel for the plaintiff HealthPlus Surgery Center, LLC in the above-captioned matter.

BRACH EICHLER L.L.C.
Attorneys For
Plaintiff HealthPlus Surgery Center, LLC

BY: /s/Charles X. Gormally, Esq.
Charles X. Gormally, Esq.

Dated: July 18, 2019

CERTIFICATION PURSUANT TO R. 4:5-1

I CERTIFY that the foregoing matter in conservatory is not the subject of any other lawsuit (aside from the person injury lawsuits I refer to in the complaint) or arbitration proceeding nor is any other such lawsuit or arbitration proceeding presently contemplated.

I FURTHER CERTIFY that the foregoing statements made by me are true. I understand that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

BRACH EICHLER L.L.C.
Attorneys For
Plaintiff HealthPlus Surgery Center, LLC

BY: /s/Charles X. Gormally, Esq.
Charles X. Gormally, Esq.

Dated: July 18, 2019

BER-L-005312-19 07/18/2019 3:05:40 PM Pg 1 of 2 Trans ID: LCV20191251909

Civil Case Information Statement

Case Details: BERGEN | Civil Part Docket# L-005312-19

Case Caption: HEALTHPLUS SURGERY C ENTER, LL VS
PROSELECT INSU

Case Initiation Date: 07/18/2019

Attorney Name: CHARLES X GORMALLY

Firm Name: BRACH EICHLER LLC

Address: 101 EISENHOWER PKWY
ROSELAND NJ 07068

Phone:

Name of Party: PLAINTIFF : Healthplus Surgery Center,
LLC

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: OTHER INSURANCE CLAIM (INCLUDING
DECLARATORY JUDGMENT ACTIONS)

Document Type: Complaint

Jury Demand: NONE

Hurricane Sandy related? «sandyRelated»

Is this a professional malpractice case? NO

Related cases pending: YES

If yes, list docket numbers: several lawsuits referred to in complaint

Do you anticipate adding any parties (arising out of same
transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Other(explain) Insurance Provider

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual
management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the
court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b)

07/18/2019
Dated

/s/ CHARLES X GORMALLY
Signed

BER-L-005312-19 07/18/2019 3:05:40 PM Pg 2 of 2 Trans ID: LCV20191251909